Supreme Court, U.S.
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No. 01-189

IN THE SUPREME COURT OF THE UNITED STATES

WALTER J. THOMAS, et al.,

Petitioners,

v.

COLIN L. POWELL,
Secretary of the Department of State, et al.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF IN OPPOSITION

MARC L. FLEISCHAKER
Counsel of Record
HENRY MORRIS, JR.
AREN'T FOX KINTNER PLOTKIN & KAHN, PLLC
1050 CONNECTICUT AVE., N.W.
WASHINGTON, D.C. 20036-5339
(202) 857-6000

Counsel for Respondents Joseph M. Sellers and Avis E. Buchanan

HENRY F. SCHUELKE, III
S. ROBERT SUTTON
JANIS, SCHUELKE & WECHSLER
1728 MASSACHUSETTS AVE., N.W.
WASHINGTON, D.C. 20036
(202) 861-0600

Counsel for Respondents Akin, Gump, Strauss, Hauer & Feld, L.L.P., Warren E. Connelly, Charles L. Warren, and Michael J. Madigan

19 pp

QUESTION PRESENTED

Whether the courts below violated the Anti-Injunction Act, 28 U.S.C. § 2283, in enjoining a state court action that sought to relitigate issues previously decided in a federal action?

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF AUTHORITIES iii

OPINIONS BELOW 1

STATEMENT OF THE CASE 2

A. The Underlying Class Action 2

B. The Superior Court Action 4

C. The District Court's Permanent Injunction 6

D. The Court of Appeals' Affirmance 7

REASONS FOR DENYING THE WRIT 9

A. The Decisions Below Are Fully Consistent with the Anti-Injunction Act 9

B. The Decisions Below Involve No "Expansion" of the Relitigation Exception to the Anti-Injunction Act 13

C. This Case was Correctly Decided and Does Not Involve Issues of Interest to Anyone Other than the Parties 14

CONCLUSION 15

TABLE OF AUTHORITIES

Page

Cases

Chick Kam Choo v. Exxon Corp., 486 U.S. 140 (1988) 9, 10, 11

Golden v. Pacific Maritime Ass'n, 786 F.2d 1425 (9th Cir. 1986) 12

Laskey v. International Union, (UAW), 638 F.2d 954 (6th Cir. 1981) 12

Samuel C. Ennis & Co. v. Woodmar Realty Co., 542 F.2d 45 (7th Cir. 1976), *cert. denied*, 429 U.S. 1096 (1977) 12

Other Authorities

Anti-Injunction Act, 28 U.S.C. § 2283 ..... *passim*

OPINIONS BELOW

The opinion of the United States Court of Appeals for the District of Columbia Circuit is reported at 247 F.3d 260 (D.C. Cir. 2001) and is reprinted at pages 1-18 of the Appendix to the Petition ("Pet. App."). The opinion of the United States District Court for the District of Columbia is reported at 77 F. Supp. 2d 114 (D.D.C. 1999) and is reprinted at Pet. App. 19-42.

STATEMENT OF THE CASE

A. The Underlying Class Action

In 1986, Petitioner Thomas and another plaintiff sued their employer, the United States Department of State, in the United States District Court for the District of Columbia. Pet. App. 4-5. The plaintiffs alleged discrimination against African American Foreign Service Officers, and sought certification as a class action. Pet. App. 4-5.

Petitioners were both named and intervenor plaintiffs in that suit. Respondents served as counsel for the putative class and later for the class as certified.

On January 31, 1996, after years of discovery and lengthy settlement negotiations, counsel for the parties signed a proposed consent decree setting forth the terms of a negotiated settlement. Pet. App. 72-74. The proposed consent decree required the State Department to reform its employment practices, enjoined the agency from discriminating against African American Foreign Service Officers, and provided for significant class-wide retroactive relief. Pet. App. 77-83. The parties also agreed that the District Court would certify the class under Federal Rule of Civil Procedure 23(b)(2). Pet. App. 5.

During a January 31, 1996, status conference, Petitioner Thomas, who was then represented by separate counsel, complained at length that several of the named class action plaintiffs opposed the settlement and had not been informed of its terms. Pet. App. 5. The District Court concluded the status call by scheduling a preliminary fairness hearing for March 20, 1996. Pet. App. 74.

Each Petitioner was represented by separate counsel at the preliminary fairness hearing, and their counsel fully presented the Petitioners' objections and concerns. The District Court nevertheless preliminarily approved the settlement and scheduled a fairness hearing designed to satisfy the requirements of Federal Rule of Civil Procedure 23(e) to begin on July 15, 1996. Pet. App. 27-28. The District Court further directed that all putative class members be informed of their right to file comments regarding the proposed consent decree, and to appear at the Rule 23(e) fairness hearing. Pet. App. 27.

During the Rule 23(e) fairness hearing, which began on July 15, 1996, and continued on July 22 and 23, 1996, Petitioners were again represented by separate counsel, and the District Court heard from every class member and legal representative who requested an opportunity to speak. Pet. App. 27. Several individual class members, including Petitioners, alleged during the preliminary and Rule 23(e) fairness hearings that Respondents had entered into the proposed settlement after most of the named and intervenor plaintiffs had rejected it (*see, e.g.*, Pet. App. 162, 169, 240), that they had failed to follow the named and intervenor plaintiffs' instructions regarding the negotiations (*see, e.g.*, Pet. App. 329), and that they had failed to keep the named and intervenor plaintiffs fully informed about the settlement negotiations (*see, e.g.*, Pet. App. 169, 260).

After "carefully consider[ing] . . . [e]ach of the issues raised by the objectors," the District Court found "the Consent Decree as a whole [to be] fair, reasonable, and adequate to the class." Pet. App. 103. The Court also found that the "settlement was clearly negotiated at arm's length and presents no danger of collusion" between the parties, and that Respondents had represented the class fairly and adequately. Pet. App. 93, 107. The District Court certified the class under

Rule 23(b)(2), but amended the settlement to permit individual class members to opt out. Pet. App. 104.

Both the State Department and a group of dissatisfied plaintiffs, including each of the Petitioners, appealed. Pet. App. 45. On appeal, the United States Court of Appeals for the District of Columbia Circuit agreed that the settlement was "eminently fair and reasonable to the class as a whole," and that Respondents had "more than adequately represented the class as a whole." Pet. App. 50, 55. Moreover, the Court of Appeals explicitly rejected Petitioners' claim that Respondents had acted in their own self interests by entering into a side letter agreement which provided that they would not advocate the right to opt out of the settlement agreement. Pet. App. 55.

The Court of Appeals did not agree, however, with the District Court's decision to allow class members to opt out. Pet. App. 63-64. The Court of Appeals carefully examined the District Court's decision and found that the District Court "did not make findings sufficient to support the conclusion that a hybrid class certification was appropriate." Pet. App. 61. To the contrary, the District Court had made all the findings "necessary to show that a hybrid class was *not* appropriate." Pet. App. 61 (emphasis added). Accordingly, the Court of Appeals held that the class was properly certified under Rule 23(b)(2), without opt out rights. Pet. App. 64.

This Court denied the dissident plaintiffs' petition for a writ of certiorari. 525 U.S. 1033 (1998).

B. The Superior Court Action

Petitioners, unsatisfied with the resolution of the class action, decided to "seek from class counsel the monetary relief that counsel could not obtain in its negotiations with the State

Department," Pet. App. 38, by suing Respondents for professional negligence in the Superior Court of the District of Columbia. In their Superior Court complaint, Petitioners alleged:

> 1. The class action attorneys breached a duty of undivided loyalty to Thomas by "'selling out' and betraying [the Plaintiffs] . . . when they entered into [a] secret agreement" to settle the case without seeking Thomas's approval first. *See* Complaint for Professional Negligence ¶ 28, *Thomas v. Akin, Gump, Strauss, Hauer & Feld, L.L.[P., et al.]*, No. 99ca1898 (D.C. Super. Ct. filed Mar. 19, 1999); *see also id.* ¶¶ 37, 46, 55, 64 (making same allegations for Thomas's co-plaintiffs).
>
> 2. The class action attorneys failed to disclose the alleged conflict of interest created by acting as class counsel and failed to inform Thomas of the negotiating position they would take with the State Department. *See id.* ¶ 29; *see also id.* ¶¶ 38, 47, 56, 65 (making same allegations for Thomas's co-plaintiffs).
>
> 3. The class action attorneys failed to follow Thomas's "express instructions regarding the certification of the class action as a Rule 23(b)(3), which would have provided for him to 'opt-out' of the class in order to receive his full measure of damages . . . ." *Id.* ¶ 26; *see also id.* ¶¶ 35, 44, 53, 62 (making same allegations for Thomas's co-plaintiffs).

Pet. App. 8.

C. The District Court's Permanent Injunction

In response to Petitioners' Superior Court action, Respondents filed in the District Court an Application for Injunctive Relief, seeking an order enjoining prosecution of the action in the Superior Court. Pet. App. 6. Respondents argued that the Superior Court action was nothing more than an attempt to relitigate matters relating to the adequacy of Respondents' representation in the underlying class action, which had already been adjudicated by both the District Court and the Court of Appeals. Pet. App. 31, 33. Respondents argued that Petitioners were collaterally estopped from seeking to relitigate these issues and that prosecution of the Superior Court action should thus be enjoined. Pet. App. 31, 33.

On December 7, 1999, the District Court granted Respondents' Application, holding as follows:

> The Court finds that the adequacy of the representation provided by [Respondents] *was actually litigated in this matter*. The Court entered a valid, final judgment on the merits after a full and fair opportunity for [Petitioners] to address the merits of [Respondents'] representation. In fact, [Petitioners] did make their objections known to the Court, and by their individual attorneys argued that the settlement did not fully address their individual rights. . . .
>
> The Court's finding that the settlement was fair, and that [Respondents] did in fact adequately represent the class was essential to its judgment. Rule 23(e) required the Court's finding of fairness as a condition to approval of the settlement. Thus, what is clear is that the settlement and consent decree rest on the

> essential finding that [Respondents] adequately represented [Petitioners].
>
> [Petitioners], through the Superior Court action, now seek from [Respondents] the monetary relief that counsel could not obtain in its negotiations with the State Department. While [Petitioners] claim not to be attacking the settlement or consent decree, or the adequacy of [Respondents'] representation in negotiations with the State Department, *it is impossible to read that action as anything but a collateral attack on the findings of this Court (and the Court of Appeals)* that [Respondents] fairly and adequately carried out its duties to the members of the class.

Pet. App. 37-38 (emphasis ~~added).~~ The District Court granted a permanent injunction after concluding that allowing the Superior Court case to go forward would have severe consequences, including discouraging future class counsel from attempting to settle class actions, discouraging attorneys from bringing class actions, and creating the possibility of nullifying the decisions of the District Court and the Court of Appeals as to the adequacy of representation. Pet. App. 39-41.

D. The Court of Appeals' Affirmance

Petitioners appealed. They argued that the Anti-Injunction Act barred the injunction issued by the District Court and that the relitigation exception to the Act, on which the District Court had relied, did not apply. Pet. App. 6.

Like the District Court, the Court of Appeals carefully analyzed Petitioners' Superior Court complaint and found that the complaint articulated the three claims described above. Pet.

App. 8. The Court then carefully considered those claims to determine whether they involved issues that had already been decided. As to the first two claims, the Court held that:

> there can be no doubt that the district court's injunction falls within the [relitigation] exception to the Anti-Injunction Act. Before approving the class action settlement, the district court performed its duty of determining whether the "settlement is fair, adequate, and reasonable and is not the product of collusion between the parties." The court found that the "settlement was clearly negotiated at arm's length and presents no danger of collusion" between the parties. The court further found that [Respondents] "fairly and adequately protected the interests of the class." While the Superior Court complaint alleges that [Respondents] "sold out" their clients, that they engaged in collusive secret negotiations to the detriment of their clients, the district court squarely decided otherwise. [Petitioners] may not relitigate these matters and an injunction preventing them from doing so in the Superior Court was in order.

Pet. App. 9 (internal citations omitted).

As to the remaining claim, a majority of the Court of Appeals concluded that, "[t]he third claim . . . rests partly on the retainer agreement between [Petitioner] Thomas and [Respondents], an agreement Thomas says imposed additional duties on [Respondents]," and is "part of a larger argument about whether [Respondents] committed professional negligence." Pet. App. 9-10. The majority found that, in order for Petitioners to succeed on their third claim, they would have to "demonstrate duty, breach, causation, and harm" – the necessary predicates to a legal malpractice claim under District

of Columbia law. Pet. App. 10. Then, focusing on the issue of harm, the majority concluded that Petitioners could establish harm only if they could establish that "they were damaged because the class *should* have been certified under Rule 23(b)(3) . . . [b]ut that necessarily would entail relitigating an issue already decided in the federal courts." Pet. App. 10-11 (emphasis in original).[1/] Accordingly, the Court of Appeals held that "the relitigation exception to the [Anti-Injunction] Act permitted the district court to enjoin [Petitioners] from pursuing their compliant in the Superior Court." Pet. App. 13.

REASONS FOR DENYING THE WRIT

A. The Decisions Below Are Fully Consistent with the Anti-Injunction Act

The decisions below represent a straightforward and conventional application of the relitigation exception to the Anti-Injunction Act, on its face and as construed by this Court in *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140 (1988). As such, they raise no important federal question warranting the Court's attention.

The Anti-Injunction Act generally bars federal courts from granting injunctions to stay state court proceedings. 28 U.S.C. § 2283. The Act, however, includes within its terms an explicit exception to this general prohibition, where an injunction is "necessary . . . to protect or effectuate [the federal court's]

[1/] Judge Sentelle agreed that Petitioners' first two claims had been adjudicated in the underlying class action, but dissented from the majority's holding that an injunction was properly issued with respect to the Petitioners' third claim. Pet. App. 18.

judgments." *Id.* This exception, known as the relitigation exception, is intended to ensure the effectiveness and supremacy of federal law by preventing state litigation of an issue that was presented to and decided by the federal court. It is founded on well-established concepts of issue and claim preclusion. *Chick Kam Choo*, 486 U.S. at 147.[2/]

In *Chick Kam Choo,* this Court instructed that the federal courts are not to engage in a "post-hoc judgment" of what an earlier federal order "was *intended* to say" when determining whether to invoke the exception. *Id.* at 148 (emphasis in original). Rather, the federal court must "assess[ ] the precise state of the record and what the earlier federal order *actually* said." *Id.* (emphasis in original).

The lower courts in this case fully complied with this Court's dictates in *Chick Kam Choo*. After carefully reviewing Petitioners' malpractice complaint and the record in the underlying class action, the District Court found that Petitioners, whose interests were fully represented at the fairness hearings by the separate counsel specifically retained for that purpose, had been provided with a full and fair opportunity to challenge the adequacy of Respondents' representation. The District Court further found that Petitioners

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[2/] The Court of Appeals "assume[d], without deciding" that the District of Columbia is a "state" for purposes of the Anti-Injunction Act, and found that the injunction at issue fell within the relitigation exception to the Act. Pet. App. 4. However, because the relitigation exception is based, in relevant part, on the doctrine of issue preclusion, *see, e.g.*, *Chick Kam Choo*, 486 U.S. at 147, that doctrine would have required the same result in this case even if the Act and its exceptions were not applicable.

had, in fact, raised objections during the earlier litigation that paralleled the claims set forth in their Superior Court Complaint. *See* Pet. App. 27, 38, 39. Accordingly, the Court determined that "the action in Superior Court" was an "attempt[] to relitigate issues that have already been finally and fully litigated" in the federal courts. Pet. App. 39.

The Court of Appeals similarly undertook a reasoned analysis of Petitioner's malpractice claims and a majority of the Court found that each of the claims would entail relitigation of issues previously decided in the federal courts.[3/] As directed by *Chick Kam Choo*, the Court of Appeals based its opinion on "the precise state of the record." 486 U.S. at 148. *See* Pet. App. 7 ("[W]e must therefore compare the complaint in the Superior Court to the record in the class action . . . "). Having done so, a majority of the Court held that all of Petitioners' claims had been actually litigated in the underlying class action.[4/] Issuance of an injunction was, accordingly, necessary

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[3/] Although Judge Sentelle dissented from the majority's holding that Petitioners' third claim was properly enjoined, he did so *not* because he believed the majority was improperly interpreting the relitigation exception, but because he disagreed with the majority about whether the class certification issue central to Petitioners' third claim had been *actually decided* in the underlying class action. *See* Pet. App. 18. Thus, even if he is right and the majority wrong, this case does not present an issue that merits the Court's attention.

[4/] Judge Sentelle's position that the class certification issue had not been actually decided in the underlying class action is directly contrary to the majority's finding that Petitioners, who were each represented by separate counsel during the fairness hearings, and who supported the creation of

to protect or effectuate the prior judgments of the federal courts, *i.e.*, it was permissible under the relitigation exception to the Anti-Injunction Act.

Moreover, the courts below are not the first to apply the relitigation exception in circumstances similar to those presented here. As the District Court noted, several other Courts of Appeals have applied the exception to similar facts. *See Golden v. Pacific Maritime Ass'n*, 786 F.2d 1425 (9th Cir. 1986); *Laskey v. International Union, (UAW)*, 638 F.2d 954 (6th Cir. 1981); *Samuel C. Ennis & Co. v. Woodmar Realty Co.*, 542 F.2d 45 (7th Cir. 1976), *cert. denied*, 429 U.S. 1096 (1977). The Petitioners have not pointed to any court decision reaching a contrary result on similar facts. The decisions below are, in short, wholly unremarkable.

Because the decisions below are fully consistent with the provisions of the Anti-Injunction Act, on its face and as construed by this Court and the other Courts of Appeals, they involve no important federal question warranting the Court's review. The Petition should, therefore, be denied.

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a hybrid class, had failed to provide any support for a determination that a hybrid class was appropriate. Pet. App. 11. "Our conclusion in *Thomas* that there was no basis for certifying a hybrid class necessarily meant that there was no basis for certifying a class under Rule 23(b)(3)." Pet. App. 11, n.2.

B. The Decisions Below Involve No "Expansion" of the Relitigation Exception to the Anti-Injunction Act

In an effort to persuade this Court to grant review of the decisions below, Petitioners contend that those decisions involve an "expansion" of the Anti-Injunction Act's relitigation exception. The record, however, belies any such contention.

As noted above, the courts below properly examined the claims set forth in the Superior Court malpractice complaint against the backdrop of the issues actually decided in the underlying class action. The injunction was issued, and later affirmed, on the basis of the courts' well-reasoned conclusions that Petitioners could not possibly succeed on any of their claims unless matters previously decided in the federal courts were "relitigated and found to be incorrect." Pet. App. 11. The lower courts' reasoned application of the relitigation exception to the Anti-Injunction Act in no way represents an "expansion" of the scope of that exception.

Petitioners suggest that because the focus of the fairness hearings was on the adequacy of the representation provided by Respondents to the class as a whole, they cannot be collaterally estopped, absent an "expansion" of the relitigation exception, from asserting malpractice claims based on the adequacy of the representation provided to them. As the courts below recognized, however, when they examined the "precise state of the record" to determine whether Petitioners' claims had previously been litigated, the adequacy of the legal representation provided by Respondents to Petitioners was fully litigated both during the fairness hearings in the District Court and in their appeal to the Court of Appeals from the District Court's approval of the class action settlement.

Contrary to Petitioners' contentions, moreover, the Court of Appeals did not "expand[] the relitigation exception to enable an injunction to bar state court resolution of issues never addressed in the prior federal action merely on the basis that the plaintiffs are *not likely to succeed* in the state court." Petition at 10 (emphasis added). Instead, the Court of Appeals examined Petitioners' state court complaint to determine whether Petitioners *could possibly succeed* with any of their state court claims absent relitigation of issues previously decided in the federal courts. After concluding that they could not, the Court properly held that the injunction issued by the District Court was not barred by the Anti-Injunction Act.

C. This Case was Correctly Decided and Does Not Involve Issues of Interest to Anyone Other than the Parties

The courts below methodically applied well-established Anti-Injunction Act standards to the unique factual and procedural record in this case and correctly concluded that Petitioners were attempting to relitigate issues that the federal courts had considered and actually decided years ago. Because the lower courts' application of the statute was entirely conventional and straightforward, this case has significance for no one other than the parties. Accordingly, it presents no important federal question warranting the Court's review.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

MARC L. FLEISCHAKER
Counsel of Record
HENRY MORRIS, JR.
ARENT FOX KINTNER PLOTKIN
& KAHN, PLLC
1050 CONNECTICUT AVE., N.W.
WASHINGTON, D.C. 20036-5339
(202) 857-6000

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HENRY F. SCHUELKE, III
S. ROBERT SUTTON
JANIS, SCHUELKE & WECHSLER
1728 MASSACHUSETTS AVE., N.W.
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